



STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, N.J. 07102

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR AN)
ORDER AUTHORIZING CONVERSENT COMMU-)
NICATIONS OF NEW JERSEY, LLC TO PROVIDE)
FACILITIES-BASED LOCAL EXCHANGE AND)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES)

ORDER OF APPROVAL

DOCKET NO. TE00020073

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated February 4, 2000, Conversent Communications of New Jersey, LLC (Petitioner or CC-NJ), filed a petition with the Board of Public Utilities (Board) requesting authority to provide facilities-based local exchange and interexchange telecommunications services including carrier access services, throughout the State of New Jersey. Petition at 1. With the petition, CC-NJ also filed a Motion for a Protective Order to limit the availability of the financial information contained in Exhibit 3 to the petition. Exhibit 3 contains the unaudited balance sheets and income statements of CC-NJ's parent, Conversent Communications, LLC (Conversent), for the period ending September 30, 1999. Additionally, Petitioner provided a copy of its response to Staff's questionnaire on March 21, 2000. By letter dated April 5, 2000, CC-NJ amended its petition to advise the Board of a proposed transaction in which the ownership of CC-NJ's ultimate parent, NEVD Holdings, LLC, will be contributed, along with interests in other telecommunications companies to a new, as yet unnamed, parent corporation (NewCo). Thus, ultimate control of CC-NJ will be transferred from NEVD Holdings, LLC, to NewCo. According to CC-NJ, the transaction, expected to close on May 15, 2000, will not materially affect CC-NJ's petition in that CC-NJ will have access to the same managerial and technical expertise and resources that are reflected in the petition¹.

According to the petition, Petitioner was formed under the laws of the State of New Jersey on November 3, 1999. Id. at 3, Exhibit 1. Petitioner's corporate offices are located at 313 Boston Post Road West, Suite 140, Marlborough, Massachusetts 01752. Id. at 2.

Petitioner has submitted copies of its Certificate of Formation, Certificate of Good Standing, and financial and technical qualifications information. Id. at 3, 4, and Exhibits 2, 3. According to the petition, CC-NJ was formed to provide facilities-based local exchange and interexchange telecommunications services to business and residential customers throughout New Jersey. Id.

¹ CC-NJ has advised the Board that as of August 28, 2000, the proposed transaction has not closed.

at 1. Petitioner advised that its corporate parent, Conversent, through various other subsidiaries, is currently certified to provide local telecommunications services in Massachusetts, New York, New Hampshire, Vermont, Rhode Island, Maine and Connecticut. Id. at 5. CC-NJ and its corporate affiliates have not been denied authority to provide telecommunications services in any State and there are no pending civil, criminal or administrative actions against them. Ibid.

On January 25, 2000, the Petitioner executed an interconnection agreement with Bell Atlantic-New Jersey, Inc. (BA-NJ), which has been submitted to the Board for its approval.

Petitioner requested waivers of rules requiring the keeping of books and records in New Jersey and the maintenance of these records according to the Uniform System of Accounts (USOA). Petitioner wishes to maintain its books and records at its corporate offices at 313 Boston Post Road West, Suite 140, Marlborough, Massachusetts 01752 and to keep those books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petitioner maintained that keeping its books and records in New Jersey and according to USOA would be unduly burdensome. Petitioner has agreed to provide to the New Jersey Board any books and records desired and to reimburse the Board for any expenses incurred in viewing them. Id. at 4.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserted that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner stated that approval of its petition would facilitate economic development in the State of New Jersey. Petition at 6.

With regard to its managerial and technical qualifications, CC-NJ stated that it possesses the technical capability and managerial qualifications on its own to operate and manage its telecommunications operations in the State of New Jersey. Id. at 5. Petitioner submitted the professional biographies of its key personnel, who, according to Petitioner, are well qualified from both a managerial and technical point of view to provide CC-NJ with a high degree of ability to run and manage CCNJ's business.

Petitioner stated that it has access to the financial capital necessary to conduct the telecommunications operations of the requested services as demonstrated by the income statements and balance sheet of its parent. In its Motion, Petitioner asserted that this information contains extremely sensitive and strategic information that could be used by competitors to determine market share, revenue and other information damaging to CC-NJ in the marketplace. Petitioner also stated that it has used its best efforts to keep and maintain this information confidential and due to the sensitive nature of this information has requested that the Board limit access to such information.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L., 104-104, 110 Stat. 56, which was codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16 (b)(1) and (3).

Therefore, having reviewed the petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff and submission of its own pro forma financial statements. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemption from maintaining its books and records in New Jersey and under the USOA.

With regard to the financial information submitted as Exhibit 2 to its petition, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner and its parent. Therefore, the Board DIRECTS that the financial information contained in Exhibit 2 be kept under seal.

DATED: 9/12/00

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

(signed)
CARMEN J. ARMENTI
COMMISSIONER

(signed)
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
SECRETARY